



Federal Communications Commission
Washington, D.C. 20554

JUN 20 1997

The Honorable Phil Gramm
United States Senator
2323 Bryan Street, #1500
Dallas, Texas 75201

Dear Senator Gramm:

Thank you for your letter, on behalf of Robert H. Schwaninger, Jr., who represents the interests of some of your constituents, regarding the Commission's pending 800 MHz Specialized Mobile Radio (SMR) Service rulemaking proceeding (PR Docket No. 93-144). Mr. Schwaninger requests that you urge the Commission not to adopt a "consensus proposal" for geographic area licensing that has been submitted by representatives of the SMR industry.

In the 800 MHz SMR proceeding, the Commission has proposed to transition from licensing service providers on a transmitter-by-transmitter basis to a geographic licensing approach, whereby single licenses are issued for geographic areas that encompass multiple sites. Citing the administrative burdens of station-by-station licensing (e.g., a licensee must obtain separate Commission approval each time a new site is added or an existing site is relocated within its system), SMR operators have urged the Commission to move to geographic area licensing as a way of giving licensees greater flexibility to adapt their service offerings to market demand. Establishing geographic area licensing will also give SMR operators the same flexibility as cellular and Personal Communications Service (PCS) providers to freely expand the geographic coverage of their systems or increase channel capacity in order to expedite a more diverse array of services to customers.

Throughout the course of the 800 MHz SMR proceeding, the Commission worked closely with all segments of the SMR industry to create a uniquely participatory decisionmaking process. The First Report and Order and Further Notice of Proposed Rule Making (First Report and Order) in this proceeding, which was released on December 15, 1995, was adopted after careful consideration of extensive comments from both large and small SMR operators, and reflected months of work by Commission staff with key SMR industry representatives in an effort to achieve consensus on major issues. Prior to the adoption of the First Report and Order, the Commission staff took the unusual step of meeting with interested parties to inform them of the staff's proposed recommendations to the Commission.

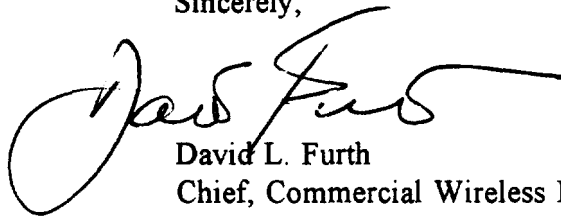
Continuing the pattern of close consultation with the SMR industry, the Commission is currently considering whether to adopt the industry consensus proposal referenced in your

letter. That proposal suggests a plan for implementing geographic licensing of the remaining 230 channels in the 800 MHz SMR band. One of the major components of the industry proposal is to allow incumbents on the lower 80 and General Category 800 MHz SMR channels to achieve pre-auction settlements within a specific geographic area on a channel-by-channel basis (i.e., they would agree to expansion rights within the area on a particular channel), thereby converting their existing site-by-site licenses to geographic area licenses. If a channel is "settled out," it would not be subject to auction.

We are encouraged that various segments of the SMR industry have been able to work together in formulating this proposal. In evaluating the proposal, one of our principal goals is to ensure that whatever procedure is adopted enables incumbents to continue serving the public with reasonable opportunities for expansion. We also want to be sure that our rules do not preclude opportunities for entry by others who may wish to provide SMR service. We fully intend to consider the interests of private, non-SMR systems that operate on General Category channels. While I cannot prejudge the outcome of this proceeding, I can assure you that we are carefully considering the industry consensus proposal, as well as all other options, in light of these goals.

The Commission expects to make a decision regarding this issue as expeditiously as possible, so as to provide existing and prospective licensees in the 800 MHz SMR band with certainty in their business planning. I appreciate your thoughts on this matter. Thank you again for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David Furth", with a large, stylized initial "D" and a long, sweeping horizontal line extending to the right.

David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

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BROWN AND SCHWANINGER

LAWYERS
1835 K STREET, N.W.
SUITE 650
WASHINGTON, D.C. 20006

DENNIS C. BROWN
ROBERT H. SCHWANINGER, JR.
KATHLEEN A. KAERCHER†
† ADMITTED IN PENNSYLVANIA

(202) 223-8837

GETTYSBURG OFFICE
1270 FAIRFIELD ROAD, SUITE 16
GETTYSBURG, PENNSYLVANIA 17325

September 27, 1996

The Honorable Phil Gramm
United States Senate
370 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Gramm:

~~We represent the interests of your constituents, CommNet Communications Network of Dallas, Mobile Relays, Inc. of McAllen, in the operation of telecommunications facilities, serving thousands of persons, companies, public safety entities, local governments, and businesses throughout the State. Our clients have become aware of a recent effort by certain trade organizations and individuals to influence your office into supporting a proposal entitled "the 800 MHz Consensus Plan" which is intended to influence the regulation of Specialized Mobile Radio (SMR) two-way radio stations by imposing forced negotiations upon independent operators. These negotiations would impede or, in many cases, halt the growth and prosperity of adversely affected operators.~~

~~The proposal is flawed, both legally and logically, in its approach to the issues presented to the FCC, as follows:~~

- * It fails to acknowledge the past misdeeds perpetrated by its most strident supporter, Nextel Communications, Inc.,⁵⁰ which created an artificial scarcity of spectrum arising out of the filing of thousands of applications which sole purpose was to chill the marketplace. These applications were patently defective and should have been dismissed outright by the FCC, however, for reasons which are not wholly clear, were actually accepted and prosecuted to grant. Separate efforts

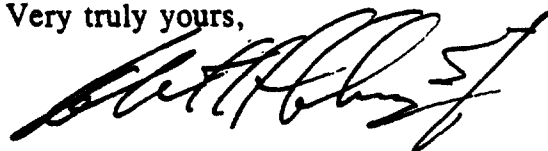
⁵⁰ Nextel also dominates the board of the trade association, AMTA, which has also pledged its support to the proposal. Nextel is also engaged in favorable private negotiations with the principal members of SMR Won, whose principals might gain a sizable economic advantage by completion of those deals. It is, therefore, obvious that the presentations made by these groups is wholly self-serving, intending to result in individual economic advantage that will not be shared with the marketplace as a whole.

are underway by our office to rectify this obvious administrative problem.

- * The proposal supports the eventual auction of the 800 MHz spectrum in manners which are not designed to create any return to the U.S. Treasury. Even a cursory examination of the proposed auction would result in a conclusion that extremely little spectrum is unlicensed and unoccupied for such an auction, and that in most instances only one potential bidder exists, Nextel Communications, Inc. It takes little logic to appreciate the results of a single-bidder auction.
- * Finally, the alleged consensus does not represent the interests of majority of the SMR operators licensed to provide services throughout the U.S. Our firm alone represents over 120 SMR operators which oppose strenuously the adoption of the proposal as a basis for future rule making. Additionally, the trade association, Small Business in Telecommunications (SBT) represents more small, local 800 MHz SMR operators than any other trade association and SBT is fully opposed to the proposal. Accordingly, if, as we suspect, the proposal is being circulated in Congress as representing a majority viewpoint, we strongly disagree to that characterization.

At this juncture, we urge your office to come to the aid of our clients and your constituents by rejecting the overtures of the persons who have sought your assistance in supporting the proposal. It provides no relief, no remedy, and no basis for long term growth by small business. It creates a dangerous precedent for intrusion by the FCC into private contractual matters for which the agency is ill-equipped to provide necessary oversight. And the proposal will create additional barriers to market entry which new Section 257 of the Telecommunications Act specifically sought to ameliorate for small business.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert H. Schwaninger, Jr.", with a stylized flourish at the end.

Robert H. Schwaninger, Jr.

RHS:rn

cc: Commercial Wireless Division
Dockets
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